

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for)	MD Docket No. 16-166
Fiscal Year 2016)	

COMMENTS

CenturyLink, Inc., on behalf of itself and its regulated subsidiaries, hereby submits these comments in response to the May 18, 2016, Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.¹ CenturyLink supports the proposals made by the Independent Telephone and Telecommunications Alliance (“ITTA”) for reform of the Commission’s policies and procedures for assessing and collecting regulatory fees.

I. INTRODUCTION AND SUMMARY.

In the NPRM, the Commission seeks comments on its proposed regulatory fees for fiscal year (“FY”) 2016. Among the proposals presented for comment are the ITTA’s proposals to combine wireless voice and wireline services into the Interstate Telecommunications Service Provider (“ITSP”) category or, alternatively, to re-assign certain Wireline Competition Bureau full-time equivalents (“FTEs”) to other fee categories, for regulatory fee purposes. The Commission had previously sought comment on these proposals in its September 1, 2015, Report

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2016*, MD Docket No. 16-166, Notice of Proposed Rulemaking, 2016 FCC Lexis 1725 (2016).

and Order and Further Notice of Proposed Rulemaking in which it adopted a schedule of regulatory fees for FY 2015.²

In the NPRM, the Commission tentatively concludes that combining wireline and wireless categories, reassigning Wireline Competition Bureau FTEs to the Wireless Telecommunications Bureau, and/or adopting a new subcategory for CMRS in the ITSP regulatory fee category are not consistent with Commission orders implementing section 9 of the Communications Act of 1934, as amended.³ The Commission then seeks comment on whether it would be appropriate to allocate some portion of the Wireline Competition Bureau direct FTEs that devote time to universal service and/or numbering issues as additional indirect FTEs.⁴

The Commission should not adopt its tentative conclusions but should instead adopt one of the ITTA proposals. As the ITTA has explained, providers and consumers of wireline voice service have borne a disproportionate regulatory fee burden relative to other industry sectors for more than a decade.⁵ This disparity often harms consumers least able to afford additional fees by increasing the cost of their home phone service. Moreover, the disparity worsens each year as customers cut the cord and switch to wireless-only service.⁶

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, MD Docket No. 15-121, Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd 10268 ¶¶ 31-34 (2015).

³ NPRM ¶ 17.

⁴ NPRM ¶ 19.

⁵ Comments of ITTA – The Voice of Mid-Size Communications Companies, *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, MD Docket No. 15-121, filed Nov. 9, 2015.

⁶ From June 2011 to June 2014 wireless subscribers increased from 298 million to 335 million while the total wireline access lines (switched access lines and VoIP subscriptions, together) decreased from 146 million to 135 million. *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*; *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*; *Procedures for Assessment and Collection of Regulatory Fees*, MD Docket Nos. 14-92, 13-140,

Contrary to the Commission's tentative conclusions, the ITTA's proposals are consistent with the Commission's orders implementing section 9 of the Communications Act. Section 9 of the Communications Act mandates that the Commission update its schedule of regulatory fees to ensure that they reflect the Commission's current activities and the benefits regulated entities receive from those activities.⁷ The ITTA's proposals recognize that wireline and wireless voice services are subject to many of the same regulatory policies, programs and obligations. Combining wireless voice and wireline services into the ITSP category or, alternatively, re-assigning certain Wireline Competition Bureau FTEs to other fee categories, for regulatory fee purposes, are appropriate steps for the Commission to take to comply with its Section 9 mandate.

If the Commission does not adopt the ITTA proposals, it should certainly reallocate direct FTEs working on universal service, numbering and 9-1-1 issues as additional indirect FTEs.

II. THE COMMISSION SHOULD ADOPT THE ITTA PROPOSALS TO TREAT WIRELESS CARRIERS AS ITSPs SO THAT ALL VOICE PROVIDERS PAY REGULATORY FEES FOR WIRELINE BUREAU FTEs ON THE SAME BASIS.

Wireline and wireless voice services are comparable in many ways and encompass similar regulatory policies and programs.⁸ Among the regulatory policies, programs and obligations that they share are universal service, intercarrier compensation, number portability, 9-1-1 emergency access, special access, rate integration, customer proprietary network

12-201, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 10767 ¶ 30 (2014)(“2014 R&O”).

⁷ 47 U.S.C. § 159(b)(1)(A).

⁸ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees*; MD Docket Nos. 14-92, 13-140, 12-201, Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking and Order, 29 FCC Rcd 6417 ¶ 36 (2014).

information, pole attachments and CALEA. Because of this overlap, it makes sense to combine wireless voice and wireline services into the ITSP category as the ITTA has proposed.

Combining wireless voice and wireline services into the ITSP category will help address the disproportionate regulatory fee burden that wireline voice providers and their customers currently bear. The Commission has proposed ITSP regulatory fees of approximately \$142 million for FY 2016, or approximately 37% of the FCC's \$384 million total annual revenue requirement.⁹ Wireline providers pay more regulatory fees than any other industry sector notwithstanding that the Commission's resources devoted to regulating wireline providers has diminished in relation to other industry sectors.

Moreover, combining wireless voice and wireline services into the ITSP category is fully consistent with Commission orders implementing section 9 of the Communications Act. There are at least two precedents for such action. First, it would be consistent with the Commission's decision to incorporate interconnected Voice over Internet Protocol ("VoIP") providers into the ITSP fee category.¹⁰ The Commission took this step to ensure that VoIP providers are paying their share of regulatory fees reflecting the Wireline Competition Bureau's oversight of voice services. The Commission noted "that the costs and benefits associated with [its] regulation of interconnected VoIP providers are not identical as those associated with regulating interstate telecommunications service."¹¹ Nevertheless, the Commission recognized that interconnected VoIP providers create costs for the Commission by participating in rulemaking proceedings,

⁹ *NPRM* ¶ 1, Appendix A.

¹⁰ *See Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712 ¶¶ 11-20 (2007) ("FY 2007 R&O").

¹¹ *FY 2007 R&O* ¶ 19.

waiver petitions and other matters relating to rules requiring such providers to contribute to the Universal Service Fund, provide 9-1-1 emergency access and other requirements applicable to voice service. Accordingly, the Commission found that VoIP providers should share in the costs of the Commission's regulatory activities in the same manner as ITSPs.¹²

Second, adoption of the ITTA's proposals would be consistent with the Commission's decision to incorporate Direct Broadcast Satellite ("DBS") providers into the regulatory fee category for cable providers.¹³ The Commission incorporated DBS providers into the regulatory fee category for cable providers notwithstanding that DBS providers are not regulated in the identical way that cable providers are regulated.¹⁴ However, the Commission determined that a significant number of Media Bureau FTEs work on Multichannel Video Programming Distributor ("MVPD") issues and that DBS providers are subject to many of the same rules as cable and IPTV providers.¹⁵ The Commission incorporated DBS providers into the cable provider fee category so that all pay-TV providers would pay their share of regulatory fees for the Media Bureau's oversight of video services.

In the event that the Commission decides not to combine wireless voice and wireline voice into the ITSP regulatory fee category, the Commission should adopt the ITTA alternative proposal to reassign Wireline Competition Bureau FTEs to the Wireless Telecommunications Bureau, and/or adopt a new subcategory for wireless providers in the ITSP regulatory fee

¹² *Id.*

¹³ *See Assessment and Collection of Regulatory Fees for Fiscal Years 2015; Amendment of Part 1 of the Commission's Rules; Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, MD Docket Nos. 15-121, 14-92, Notice of Proposed Rulemaking, Report and Order, and Order, 30 FCC Rcd 5354 ¶¶ 28-41 (2015) ("*FY 2015 NPRM*").

¹⁴ *Id.*, ¶ 33.

¹⁵ *Id.*, ¶¶ 31-33.

category. Substantial efforts by the Wireline Competition Bureau benefit wireless providers as much or more than ITSPs. For example, the Bureau has devoted substantial resources in an effort to modernize the Lifeline program and to reform the Commission's high cost universal service mechanisms. Wireless providers received approximately \$1.4 billion in Lifeline disbursements in 2014.¹⁶

Section 9 of the Communications Act requires that fees levied on regulated entities be derived based on the number of FTEs engaged in regulatory activities within the named bureaus "and other offices of the Commission" adjusted to account for "factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."¹⁷ "[T]he plain wording of the statute requires the Commission to calculate fees based on what FTEs are doing, not on where they are located."¹⁸ Accordingly, the Commission should reassign Wireline Competition Bureau FTEs that benefit wireless providers to the Wireless Telecommunications Bureau or at a minimum put them into a new category within the ITSP regulatory fee category so that the industry sectors that benefit from these FTEs will bear their fair share of the associated regulatory fees.

¹⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 15-121, 30 FCC Rcd 10268 ¶ 34 n. 117 (2015) ("2015 R&O").

¹⁷ 47 U.S.C. § 159(b)(1)(A).

¹⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket Nos. 13-140, 12-201 and 08-65, 28 FCC Rcd 12351 ¶ 18 (2013).

III. ALTERNATIVELY, THE COMMISSION SHOULD ALLOCATE THE WIRELINE COMPETITION BUREAU DIRECT FTEs DEVOTED TO UNIVERSAL SERVICE, NUMBERING AND 9-1-1 ISSUES AS ADDITIONAL INDIRECT FTEs.

The NPRM seeks comment on whether it would be appropriate to allocate some portion of the direct FTEs that devote time to universal service and/or numbering issues as additional indirect FTEs. In the event the Commission does not adopt one of the ITTA proposals, it should at a minimum allocate direct FTEs devoted to universal service and numbering issues as additional indirect FTEs. In addition, the Commission should allocate direct FTEs devoted to 9-1-1 support as indirect FTEs. It is the Commission's historical practice to allocate FTEs as indirect "where the FTEs work on a variety of issues that cannot be attributed to one particular type of industry or regulatee . . ."¹⁹

As the Commission notes, based on the most recent 6 to 12 month period, approximately 52 FTEs in the Wireline Competition Bureau work on universal service issues.²⁰ Of the FTEs that work on universal service issues, approximately 16 work on the high-cost program, 13 work on the schools and libraries program, nine work on the Lifeline program, seven work on the rural healthcare program and seven work on universal service contributions.²¹ A substantial portion of these FTEs should be allocated as indirect FTEs. In particular, the FTEs that work on the high cost program and the Lifeline program should be allocated as indirect FTEs. The FTEs that work on the high-cost program should be allocated as indirect FTEs because a substantial portion of this work relates to the Connect America Fund and involves the participation of both wireline

¹⁹ 2015 R&O ¶ 16.

²⁰ NPRM ¶ 19.

²¹ *Id.*

and wireless regulatees. The FTEs that work on the Lifeline program should be allocated as indirect FTEs because wireless providers are the primary beneficiaries of the Lifeline program.

The Commission also notes that seven FTEs in the Wireline Competition Bureau work on numbering issues. These FTEs should also be allocated as indirect FTEs because a significant number of regulatees benefiting from numbering issues are not wireline regulatees. Indeed, there are more wireless subscribers in the United States today than there are wireline access lines and the number of wireless subscribers has been increasing while the number of wireline access lines has been decreasing.²² If numbering FTEs are not to be allocated directly to the Wireless Telecommunications Bureau, these FTEs should at least be allocated as indirect FTEs given the significant benefit that wireless providers receive.

Finally, there is one additional category of FTEs that should be allocated as indirect FTEs. The Wireline Competition Bureau includes a number of FTEs that work on 9-1-1 issues. The 9-1-1 FTEs benefit wireline providers and wireless providers alike. Indeed, wireless providers may actually benefit more than wireline providers. Each year, an estimated 240 million calls are made to 9-1-1 in the United States and in many areas, 70% or more are from wireless devices.²³

²² 2014 R&O ¶ 30.

²³ See National Emergency Number Association, 9-1-1 Statistics, available at: <http://www.nena.org/?page=911Statistics> (last visited June 9, 2016).

IV. CONCLUSION.

For the above reasons, the Commission should either adopt one of the ITTA proposals or alternatively allocate the direct FTEs that devote time to universal service, numbering and 9-1-1 issues as additional indirect FTEs.

Respectfully submitted,

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